

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**DOUGLAS L. SMITH and JANET
BONAFEDE-SMITH, husband and
wife,**

Plaintiffs,

v.

No. CIV 98-558 BB/WWD

**AMERICAN HOME PRODUCTS
CORPORATION; WHITEHALL-
ROBINS LABORATORIES, a
Division of American Home
Products; PERRIGO COMPANY;
P H A R M A C E U T I C A L
FORMULATIONS, INC., WAL-
MART; WALGREENS; and PRICE
CLUB/COSTCO WHOLESALE,**

Defendants.

**MEMORANDUM OPINION
AND
ORDER DENYING RECONSIDERATION**

**THIS MATTER comes before the Court on Plaintiffs' motion seeking
reconsideration of this Court's April 19, 2000, order, and the Court having
considered the briefs together with the attachments submitted by counsel, FINDS
the motion should be Denied.**

Discussion

Plaintiffs seek to amend their complaint to again assert a claim sounding in strict liability based on Defendants' alleged failure to adequately inform the United States Food and Drug Administration of the renal effects of ibuprofen. This Court has previously held this is not an appropriate strict liability theory, but permitted Plaintiffs to assert this claim under negligence, negligence per se, and intentional misrepresentation. Moreover, while Plaintiffs' legal precedent might have been persuasive on the summary judgment issues decided last year, this case is now three weeks from jury selection. Discovery has closed, witnesses are scheduled, even subpoenaed. It is too late to amend the complaint. *Las Vegas Ice & Cold Storage Co. v. Far West Bank*, 893 F.2d 1182 (10th Cir. 1990); *Anheuser-Busch, Inc. v. John Labatt, Ltd.*, 89 F.3d 1339 (8th Cir. 1996), cert. denied, 519 U.S. 1109 (1997).

O R D E R

For the above stated reasons, Plaintiffs' motion for reconsideration is DENIED.

Dated at Albuquerque this 12th day of June, 2000.



BRUCE D. BLACK
United States District Judge

Counsel for Plaintiffs:

Suzanne E. Kinney, Susan M. Hapka, Barlow & Kinney, Albuquerque, NM

Counsel for Defendants:

Charles A. Pharris, Kathleen M. Regan, Keleher & McLeod, Albuquerque, NM

Martha Brown, Modrall Sperling Roehl Harris & Sisk, Albuquerque, NM
Tracy Jenks, Rodey Dickason Sloan Akin & Robb, Albuquerque, NM